In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 381

ALBERT J. MINICHELLO, ET AL., PETITIONERS

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR RESPONDENT CAMP IN OPPOSITION

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1. Petitioners have challenged the determination by the Comptroller of the Currency that an "emergency" beset the bank of which they were minority shareholders, thereby waiving the requirement that sale of the assets of a national bank is conditioned on approval by two-thirds of the shareholders. 12 U.S.C. 181. Apart from issues that this Court declined to review at an earlier stage in these proceedings, petitioners raise only a question of the sufficiency of the evidence, which is inappropriate for further review.

In 1964, the court of appeals rejected the principal legal contentions renewed in the present petition, finding unsound petitioners' contention that the directors were incompetent to contract for the sale of the First National Bank of Exeter to the Wyoming National Bank because at the time the sale was agreed upon the Exeter Bank was in conservatorship (Pet. App. 86-88; 337 F. 2d 75). The court also, however—disagreeing both with the Comptroller's position that his finding of an emergency under 12 U.S.C. 181 is not reviewable, and with petitioners' position that the test is the existence of an actual emergency—remanded the case to the district court for the purpose of determining whether "a reasonable man on the basis of facts of which he [the Comptroller of the Currency] was aware or should have been aware, could have reasonably concluded that an emergency existed," so that his waiver of shareholder approval of the contract would be proper under the statute. On March 29, 1965, this Court denied petitioners' request for review of those holdings. (No. 861, O.T. 1964; 380 U.S. 952).

After trial on remand, the district court found that the Comptroller could reasonably have concluded that an emergency existed when he waived the requirement of shareholder approval of the sale of the bank. In the course of his detailed findings of fact (Pet. App. 100-116), the district judge commented that "[h]ad it not been for the firm and decisive action of the Comptroller, which I have found was fully justified, it is entirely possible that the situation as it existed on February 26, 1962 [the date of the agreement of sale], might have deteriorated and resulted in a very substantial loss to the depositors, other creditors and

shareholders of the First National Bank of Exeter" (Pet. App. 115). The court of appeals affirmed, *per curiam*, ruling that there was ample evidence to support the findings of the district court (Pet. App. 117-119).

2. As shown in our Brief in Opposition to the previous petition (No. 861, O.T. 1964), the legal issues presented in this and the previous petition were correctly decided below, and are not of recurrent significance. There is no conflict of decisions. The lengthy argument in the petition (Pet. 24-68) and the opinions below (Pet. App. 100-119) demonstrate that the only additional issues now presented raise merely factual questions about the degree of exigency under which the Comptroller acted. Since both courts below agreed that the Comptroller acted reasonably in finding that the circumstances warranted emergency action under 12 U.S.C. 181, there is no occasion for review by this Court.[1] See *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U.S. 271, 275. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1968.

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[1] In opposing the previous petition we also relied on the interlocutory posture of the case. Final resolution of the matter has now underscored the lack of general significance of the issues presented.

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